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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,122	02/06/2004	Thomas P. Zwaka	960296.99021 8384	
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Nicholas J. Seay			MARVICH, MARIA	
Quarles & Brad P O Box 2113	ly LLP		ART UNIT	PAPER NUMBER
Madison, WI 53701-2113			1633	
			DATE MAILED, 10/04/2004	,

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Eathermost or item rays be waiting under the provision of 3° CFR 1.35(a). In no wern, may a reby be timely filled If NO period for regly is specified above, the maximum statutory period will apply and will expire SIX (8) MONTHS from the maining date of this communication. Failur to represent by min the set or centeded period for reply will by statistic, uses the application to become ABANDONED (38 U.S. C. § 133). Any reply received by min the set or centeded period for regly will by statistic, uses the application to become ABANDONED (38 U.S. C. § 133). Any reply received by min the set or centeded period for regly will be stated, cause the application to become ABANDONED (38 U.S. C. § 133). Any reply received by min the set or centeded period for regly will be stated, cause the application to become ABANDONED (38 U.S. C. § 133). Any reply received by min the set or centeded period for reply will be stated, cause the application to become ABANDONED (38 U.S. C. § 133). Any reply received by min the set or cented and the replaced and the replaced and the set of the communication. Status 1) Responsive to communication(s) filled on		Application No.	Applicant(s)					
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WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extractions of time may be available under the provisions of 37 CFN 11360, in no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication of 37 CFN 11360, in no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failur to reply veclowed by the Office lake than three mornits after the mailing date of this communication, even if timely filed, may reduce any rearried parent time adjustment. See 37 CFR 1.74(4)) Status 1)	The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
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Claims 1-16 are pending in this application and subject to restriction.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-4, 7-10, 12 and 13, drawn to a method for targeted modifications,

classified in class 435, subclass 455.

II. Claims 5, 6, 11 and 14-16, drawn to a human cell in culture comprising either a

knockout or a mutation in an endogenous gene, classified in class 435, subclass

366.

The inventions are distinct each from the other because of the following reasons:

Inventions of Group II and Group I are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as

claimed can be used to make another and materially different product or (2) that the product as

claimed can be made by another and materially different process (MPEP § 806.05(f)). In the

instant case the cells can be made by transfection of the human embryonic stem cells using

cationic polymers.

Searching the inventions of either of Groups I and II together would impose serious

search burden. The inventions of Groups I and II have a separate status in the art as shown by

their different classifications. Moreover, in the instant case, the search for the human cells and

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the method of making the cells are not coextensive. Prior art, which teaches the cells, would not necessarily be applicable to the method of making the cells. Moreover, even if the product were known, the method of making the product may be novel and unobvious in view of the preamble or active steps.

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provision of MPEP 821.04. Process claims that depend for or otherwise include all the limitations of the patentable produce will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendment submitted after allowance are governed by 37 CFR 1.312.

In the event of rejoinder, the requirements for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 USC 101, 101, 103 and 112. Until an elected product claim is found allowable, an otherwise proper restriction between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claim in light of In re Ochiai, In re Brouwer and 35 USC 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right

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to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. Failure to do so may result in loss of the right to rejoinder.

Further, note that the prohibition against double patenting rejections of 35 USC 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP 804.01.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and the search required for each group is not required for the other groups because each group requires a different nonpatent literature search due to each group comprising different products and/or method steps, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria B. Marvich, PhD whose telephone number is (571)-272-0774. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Nguyen, PhD can be reached on (571)-272-0731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Maria B Marvich, PhD

Examiner

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SCOTT D. PRIEBE, PH.D. PRIMARY EXAMINER

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